

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 15,489

IN THE MATTER OF:

Served April 7, 2015

Application of NIPPON TRAVEL OF	)	Case No. AP-2014-295
USA, INC., for a Certificate of	)	
Authority -- Irregular Route	)	
Operations	)	

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a seating capacity of less than 16 persons only, including the driver. The application is unopposed.

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

Normally, such evidence would establish an applicant's fitness,<sup>1</sup> but in this case applicant's president, Mr. Osamu Noguchi, has a history of controlling a company with regulatory violations.

Mr. Noguchi is the president of Nippon Travel, Ltd., which held WMATC Certificate No. 77 when it was revoked in Order No. 10,392 on April 6, 2007, for Nippon Travel Ltd.'s willful failure to comply with the Commission's insurance requirements.<sup>2</sup> The revocation order directed Nippon Travel, Ltd., to surrender Certificate No. 77 and file an affidavit confirming removal of WMATC markings from Nippon Travel Ltd.'s vehicles. Nippon Travel, Ltd., did not comply.

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<sup>1</sup> *In re Reliable Med. Transp., LLC.*, No. AP-08-180, Order No. 11,820 (Jan. 26, 2009); *In re Henka Int'l, Inc., t/a Worldwide Tours & Travel*, No. AP-03-184, Order No. 8035 (May 27, 2004).

<sup>2</sup> *In re Nippon Travel, Ltd.*, No. MP-07-024, Order No. 10,392 (Apr. 6, 2007)

When a person controlling an applicant has a record of violations, or a history of controlling companies with such a record, the Commission considers the following factors in assessing the likelihood of applicant's future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether the controlling party has made sincere efforts to correct past mistakes, and (5) whether the controlling party has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.<sup>3</sup>

Mr. Noguchi explains that Nippon Travel, Ltd., caters to tourists from Japan and that its business began falling at the end of the 1990s because of a precipitous drop in the Japanese economy, which eventually forced Nippon Travel, Ltd., to cease operating its own vehicles in 2007. He says that a recent rebound in the Japanese economy has resulted in an increase in Japanese tourists visiting the United States.

As for why Nippon Travel, Ltd., failed to surrender Certificate No. 77 and file a vehicle marking removal affidavit as required by the 2007 revocation order, Mr. Noguchi explains: "At the time I was closing my business, I was confused and distressed and did not remember to send you the affidavit as required." By affidavit filed in this proceeding, Mr. Noguchi confirms removal of all markings. Additionally, he states that Certificate No. 77 has been misplaced.

It thus appears that Nippon Travel, Ltd., ceased passenger carrier operations in 2007. There is no evidence in the record to the contrary. The Commission has found other applicants fit under similar circumstances.<sup>4</sup> Applicant, however, shall serve a one year period of probation as a means of ensuring prospective compliance.<sup>5</sup>

Based on the evidence in this record, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

In closing, it is noted that the application fee was paid by check drawn on the account of "Nippon Travel, Ltd." Applicant is

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<sup>3</sup> Order Nos. 11,820; 8035.

<sup>4</sup> See Order No. 11,820 (no evidence of post-suspension operations and no other outstanding issues); *In re Business Logistics Group, L.L.C., t/a ATS, L.L.C.*, No. AP-06-002, Order No. 9652 (June 15, 2006) (verification of no post-suspension operations and payment of outstanding fees and forfeitures); Order No. 8035 (no evidence of post-suspension operations and satisfactory accounting for vehicles and vehicle markings).

<sup>5</sup> See Order No. 11,820 (same); Order No. 9652 (same); Order No. 8035 (same).

admonished to keep its WMATC assets, books, finances and operations completely separate from those of Nippon Travel, Ltd.<sup>6</sup>

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 77 shall be issued to Nippon Travel of USA, Inc., 10901 Roundtable Court, North Bethesda, MD 20852-4558.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

3. That applicant is hereby directed to file the following documents and present its revenue vehicle(s) for inspection within the 180-day maximum permitted in Commission Regulation No. 66: (a) evidence of insurance pursuant to Commission Regulation No. 58; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; and (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia.

4. That applicant shall be placed on probation for a period of one year commencing with the reissuance of Certificate No. 77 in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant or its members during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.

5. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.  
Executive Director

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<sup>6</sup> See *In re Nassco Lemo LLC*, No. AP-13-252, Order No. 14,224 (Sept. 30, 2013) (requiring separation from account owner).